MWEB ADSL & DStv Terms and Conditions

A. INTRODUCTION

1. We, Multichoice Africa (Pty) Limited (registration number 1994/009083/07) ("Multichoice") and Multichoice Subscriber Management Services (Pty) Limited- Internet Division (registration number 1996/015134/07) ("MWEB"), (collectively "us" or "the Companies") set out below the terms and conditions ("the terms and conditions") in terms of which the Dstv / MWEB Subscription Product is offered. The Product consists of:

1.1 the MWEB All-inclusive ADSL Service, which enables access to the Internet and the sending and receiving of data and email, using an Asymmetric Digital Subscriber Line ("ADSL") which transmits data onto the Telkom network ("ADSL Service") ;

1.2 a device ("Modem" or "Router") which connects a computer to a Telkom fixed access line ("Telkom Line");
(the Modem or Router will herein after collectively be referred to as the "Hardware") ; and

1.3 a Dstv Premium bouquet subscription (i.e. access to Multichoice's standard bouquet) (the "Multichoice Service"); and

1.4 except for current Multichoice PVR subscribers, a Personal Video Recorder Decoder ("PVR").

2. The terms "the subscriber" or "you" refer to the person who applies to subscribe to the DStv/MWEB Subscription Product on these terms and conditions, and whose application is approved by us.

3. You will apply to subscribe to the DStv / MWEB Subscription Product by submitting the prescribed application form to us, in which you will make specific selections in so far as the compilations of the ADSL and the MultiChoice Services are concerned (your "Application Form").

4. A subscription agreement ("the Agreement") will come into effect between us on these terms and conditions, read together with your Application Form, on the date on which we inform you that your application has been approved ("Commencement Date"), subject to the suspensive condition that you effect payment of the purchase price of the PVR to us as contemplated in G.2 below.

5. If we do not approve your Application (which we reserve the right to do for any valid reason), we shall have no obligation to you arising from your Application.

6. This Agreement is a tax invoice as it meets all requirements as detailed in VAT Practice Note 2, read with section 20(7) of the Value Added Tax Act, 1991.

7. If there is a conflict between these terms and conditions and your Application Form, the provisions of your Application Form will prevail.

B. COMMENCEMENT AND DURATION OF THE AGREEMENT

1. Regardless of the place at or date on which you apply for the DStv / MWEB Subscription Product , the Agreement between us is deemed to be concluded on the Commencement Date at MWEB's principal place of business in Parow, Cape Town, South Africa.

2. The Agreement will come into effect on the Commencement Date, and will continue for an uninterrupted initial period of 12 (twelve) months (the "Initial Period"), subject to:

2.1 a renewal of the Agreement on a month to month basis upon the expiry of the Initial Period, unless and until such time as terminated by you on 1 (one) month's prior written notice to us; or

2.2 termination of the agreement between us and Telkom relating to the ADSL Service, under which circumstances the terms and conditions which govern the provisioning of the ADSL Service will be severed from this Agreement and you will remain bound by the terms and conditions of this Agreement in so far as they apply to the Multichoice Service only. You agree not to hold us liable for any damages suffered by you arising from the termination of the ADSL Service as contemplated in this clause B 2.2.

3 Termination of the Agreement will not affect or prejudice –

3.1 rights or remedies which accrued to either party prior to termination; and

3.2 rights and obligations which the Agreement intends, either expressly or by implication, to survive the termination thereof.

C. ADSL SERVICE TERMS

1. By using or subscribing to the ADSL Service you agree that you have read, understand and agree to be bound by:

1.1 the terms and conditions set out at www.mweb.co.za/notices/default.aspx to the extent that such terms and conditions apply to the ADSL Service (General Terms); and

1.2 the terms that apply specifically to the ADSL Service, set out in this clause C and on www.myadsl.mweb.co.za ("ADSL Website") (ADSL Service Terms).

2. In the case of an inconsistency between the ADSL Service Terms and the General Terms, the General Terms will prevail.

3. Pre-requisites for the ADSL Service

3.1 ADSL availability

3.1.1 The ADSL Service is not available everywhere.

3.1.2 You are responsible for determining whether the ADSL Service is available on your Telkom Line before you subscribe to the
DStv / MWEB Subscription Product.

3.2 Telkom Line and ADSL
You are required to have beneficial use of an active Telkom Line, as well as an ADSL in order to make use of the ADSL Service.
You can gain access to an ADSL in one of two ways:

3.2.1 Rent an ADSL from MWEB directly, under which circumstances:

3.2.1.1 you will qualify for the Self Install Option according to the criteria determined by Telkom, as set out on the ADSL Website (this means that you have to complete the part of the ADSL installation that is required to take place at your premises, yourself);

3.2.1.2 MWEB will apply to Telkom for the ADSL on your behalf and Telkom may approve your application;

3.2.1.3 MWEB will supply you with a Modem which is required to enable the ADSL Service;

3.2.1.4 MWEB will provide the ADSL Service to you, over the Telkom ADSL network;

3.2.1.5 you will agree to and sign the Telkom Reseller ADSL Terms and Conditions (available at www.telkom.co.za/athome/products/dsl/home); and

3.2.1.6 you acknowledge that an ADSL procured in this manner will have one of 3 (three) line speeds:

3.2.1.6.1 up to 384 Kbps;

3.2.1.6.2 up to 512 Kbps; or

3.2.1.6.3 up to 4096 Kbps; or

3.2.2 Transfer your existing Telkom ADSL to MWEB, under which circumstances:

3.2.2.1 you will consent in writing that MWEB may terminate your existing ADSL with Telkom and that we may transfer your ADSL to MWEB;

3.2.2.2 you agree to rent the ADSL from MWEB and agree that MWEB will provide you with a Base Cap (as defined in clause 4.1 below); and

3.2.2.3 you indemnify MWEB against any damages or penalties which may arise from the termination of your existing Telkom ADSL.

3.3 Should you not qualify for the Self Install Option (as contemplated in C.3.2.1), we will give you the option to obtain a MWEB Vodacom or iBurst 3G connection.

3.3.1 Should you exercise the option:

3.3.1.1 the composition of the DStv/ MWEB Subscription Product will change,

3.3.1.2 the terms and conditions which govern the provisioning of the ADSL Service will be severed from this Agreement;

3.3.1.3 the terms and conditions under which the Multichoice Service is provided will remain the same;

3.3.1.4 you will be required to agree to and sign either the MWEB Wireless Broadband Terms and Conditions (Vodacom 3G) or the MWEB Wireless Broadband Terms and Conditions (iBurst);

3.3.1.5 MWEB will not furnish you with the Hardware referred to in A1.

3.3.2 Should you select not to exercise the option:

3.3.2.1 you will remain bound by the terms and conditions under which the Multichoice Service is provided; and

3.3.2.2 the terms and conditions which govern the provisioning of the ADSL Service will be severed from this Agreement.

4. Data sent or received over and above your Base Cap ("Out of Package

Usage")

4.1 When you reach or exceed your Base Cap (which is the amount of data, measured in Gigabytes (GB), made available to you to send and receive during the course of a calendar month), you will not be able to use the ADSL Service, send or receive data or email, or access the Internet until the start of the next month, unless you do one of the following things to increase your Base Cap:

4.1.1. buy a Booster

4.1.2 use a dial-up service; or

4.1.3 increase your Base Cap to a higher Gigabyte factor.

4.2 The different Out of Package Usage options are detailed on the ADSL website.

4.3 We have a computer system that is capable of measuring your usage of the ADSL Service to determine if and when you reach your Base Cap. However, due to the way in which Telkom offers ADSL, we can only measure your usage at times when you end a current session. Your current session will end: -

4.3.1 automatically, at least once every 24 (twenty four) hours for a very short period ; and

4.3.2 when you manually end your session.

4.4 It lies within our discretion to end your current session at any time to measure your usage.

4.5 Because your access to the ADSL Service will be restricted when you reach your Base Cap, it is important that you:

4.5.1 monitor your usage of the ADSL Service by using the free cap aids and alerts as described on the ADSL website, and

4.5.2 regularly end your current sessions so that we may be able to measure your usage.

4.6 We do not guarantee the efficiency of the measures available to limit your access as contemplated in this C. 4. We will not be liable if you exceed your Base Cap, and will charge you for Out of Package Usage at our prevailing rates.

4.7 The final responsibility for monitoring and controlling your use of the ADSL Service lies with you.

5. Concurrency

You may only have certain connections to the ADSL Service at any given time. These connections are set out on the ADSL website.

D. MULTICHOICE SERVICE TERMS

1. Changes to Multichoice features, functionality and systems

1.1 From time to time we may –

1.1.1 replace, withdraw or otherwise amend the content, features and/or functionality of the Multichoice Service, or restrict its availability;

1.1.2 make any changes (including but not limited to adding new programming, channels, services, bouquets, applications and facilities, and dropping others) to the range, nature, format and content of the services provided by us from time to time, including –

1.1.2.1 the range of specific Multichoice services offered;

1.1.2.2 the composition of specific bouquets; and

1.1.2.3 the range, nature and number of any ancillary applications, facilities or services including but not limited to the Electronic Programme Guide and other interactive services;

1.1.3 advise you of additional applications, features or functionality which are available, the conditions applicable thereto and the charges therefore, if any, which, if you accept them, will be included in the Multichoice Service, and you will be obliged to pay the additional charge, if any; or

1.1.4 change a feature or functionality forming part of the Multichoice Service, into one that you must pay an additional charge for if you wish to continue receiving it.

1.2 The various systems necessary for or associated with the provision of the Multichoice Service (including without limitation technical services, signal distribution and satellite capacity, the conditional access system, the software operating system, software applications, subscriber management services and business systems) are determined by us from time to time and are subject to ongoing innovation and change. Without limiting the above you agree that we may -

1.2.1 change or replace the software of these systems, including by means of "over the air" software downloads, to address any problems authorised to decrypt signals other than those authorised by Multichoice; and/or

1.2.2 recommend that you upgrade, reconfigure or swap-out ("swap-out") one or more of the hardware components used by you in accessing the Multichoice Service if your continued access to the Multichoice Service will be negatively affected if the swap-out does not happen; and

1.2.3 disable or remotely alter the functionality of the PVR , to prevent you from copying certain channels or programmes if we become obliged to do so.

2. User Manual

2.1 The Agreement incorporates the standard operating instructions for your type of decoder as published and updated from time to time by us ("the User Manual"). The User Manual includes standard operating guidelines for subscribers on, for example, installing and setting up your type of decoder, troubleshooting, safety guidelines, decoder specifications etc.

2.2 If there is any conflict between the terms and conditions of this Agreement and the User Manual, these Terms and Conditions will prevail.

3. Hardware

3.1 You may only access the Multichoice Service using a Smartcard supplied by us ("Smartcard") in your PVR in accordance with the User Manual.

3.1.1 We may at any time require that the unique Smartcard issued to you be used only with your PVR, in which event we shall be entitled to disable any Smartcard not used in the corresponding PVR.

3.1.2 Only you and members of your household may use the Smartcard. Having a Smartcard does not on its own entitle you to receive the Multichoice Service.

3.1.3 You may not tamper with the Smartcard or attempt to use it for any purpose not authorised by us.

3.1.4 We can disable the Smartcard whether temporarily or permanently if –

3.1.4.1 any unauthorised person uses the Smartcard;

3.1.4.2 you are in breach of the Agreement;

3.1.4.3 it is necessary to protect the integrity of Multichoice conditional access system;

3.1.4.4 the Smartcard is damaged, lost or stolen; or

3.1.4.5 it is otherwise reasonable to do so.

3.2 The Smartcard must be kept in the PVR which we recommend be connected to the mains power supply and to the satellite reception equipment, and in standby mode when not in use, to enable the updating of the software in the PVR via satellite and in order that your continued access to the Multichoice Service is not negatively affected. You acknowledge that in such standby mode the PVR may generate heat and noise and that it will be positioned with these factors in mind.

3.3 You must inform us immediately if the Smartcard is lost, stolen or damaged and the Smartcard will be replaced subject to a replacement fee as charged by us from time to time.

4. PVR decoders and PVR functionality

4.1 You agree that you will only have the right to use the PVR functionality if and for so long as you are in compliance with all provisions of the Agreement and the Agreement remains in force. For clarity, if we should suspend your authority to access the Multichoice Service and/or should the Agreement be terminated you will no longer have the right to use the PVR functionality and you will have no right of access to any content copied to the hard drive memory ("HDD") of the PVR decoder.

4.2 The PVR functionality is only available in the foot print of the PAS-7 satellite. While we have no reason to believe subscribers in South Africa will not be able to use the PVR functionality, we cannot guarantee that such functionality will be available at all places in South Africa.

4.3 You may not sell or otherwise transfer the PVR and its related HDD.

4.4 You acknowledge that-

4.4.1 part of the memory space in the HDD is reserved for use by Multichoice for future applications, for fault reporting and for capturing user profiles;

4.4.2 we are not liable to you for any loss of memory space in the HDD nor for any loss or corruption of content recorded on the HDD; and

4.4.3 the memory space available for your use on the HDD is a finite resource and should it be exhausted we have no obligation to provide you with additional memory space.

E. RESTRICTIONS ON ACCESS TO AND USE OF THE MULTICHOICE AND THE ADLS SERVICE

1. You may only receive and/or use the Multichoice Service and the equipment required for the receipt of the Multichoice Service, including the PVR, Smartcard and the related satellite reception equipment and cabling ("the Equipment")-

1.1 in a single residential unit;

1.2 for private domestic use; and

1.3 at your Address (as recorded in the Application) in South Africa. You may not use the PVR and Smartcard outside South Africa.

2. Without limiting the restrictions in E.1, you may not -

2.1 have access, or attempt to have access, to any Multichoice service other than the Multichoice Service provided to you under this Agreement;

2.2 receive and/or use the Multichoice Service in a hotel, motel, pub, club, hostel, embassy, in any educational, correctional or medical institution, in any office nor in any business premises;

2.3 exhibit or use the Multichoice Service in public, whether or not admission fees are charged; or

2.4 charge any person any fee to view or use any content of the Multichoice Service;

2.5 copy any of the content of the Multichoice Service;

2.6 redistribute, relay, retransmit or rebroadcast any of the content of the Multichoice Service;

2.7 use the content for any commercial purpose; or

2.8 hack, reverse engineer or otherwise compromise the security of the conditional access system, operating software or encryption software used in the Smartcard and the PVR used to receive the Multichoice Service; or

2.9 permit, facilitate or condone any other person doing so using the Smartcard or your decoder.

3. You agree to the terms of our ADSL acceptable use policy set out below:

3.1 You will only use the ADSL Service for purposes: -

3.1.1 that are lawful; and

3.1.2 for which it was designed.

3.2 You will not use the ADSL Service, directly or indirectly, in a way that: -

3.2.1 is harmful, obscene, discriminatory, defamatory or illegal;

3.2.2 constitutes hate speech, incitement to commit criminal acts, or invasion of privacy;

3.2.3 infringes copyright or other intellectual property rights;

3.2.4 spreads viruses or other computer or communications software, code, programs or files that impede or destroy the functionality of any computer or communications software or Equipment;

3.2.5 interferes with any third party's use of the ADSL Service;

3.2.6 transmits unsolicited bulk messages ("spam");

3.2.7 obtains information about or from third parties;

3.2.8 causes your Base Cap to be regularly exceeded; or

3.2.9 otherwise breaches the General Terms or the ADSL Service Terms.

3.3 We reserve the right to limit the number of emails that you may send in any given period or to limit the total message volume (amount of data) sent per hour.

4. You acknowledge that a breach by you of the provisions of this clause E may constitute a criminal activity and will result in considerable prejudice and damage to us and/or our third party suppliers which may be difficult or impossible to quantify. You agree to pay to us, if you are proven to be in breach of any of the provisions of clause E, an agreed pre-estimate of liquidated damages of R100 000.00 per incident of breach and, if the breach is or was ongoing, a further R20 000.00 per day for which such breach continued, without prejudice to our rights arising pursuant to your breach of the Agreement, including the right to prove and recover our actual damages.

F. WARRANTY

If and for so long as the period of the manufacturer's warranty in relation to your PVR has not expired and you are not in breach of the terms of the warranty or the terms and conditions contained herein, you will be entitled to have the PVR repaired or replaced subject to the terms of the warranty.

G. FEES

1. Multichoice has appointed MWEB as its billing and collection agent for all amounts due in respect of the Multichoice Service under the Agreement.

2. Unless you are an existing Multichoice PVR subscriber, you will effect payment to MWEB of an amount of R 1999 (one thousand nine hundred and ninety nine Rand) (VAT included) into such bank account as MWEB may nominate, within 5 (five) working days (i.e. Monday to Friday, excluding public holidays) of the Commencement Date and in any event prior to the delivery of the PVR. This amount is the once off purchase price for the PVR and will not be refunded under any circumstances.

3. You will pay the charges and fees below to MWEB, in addition to the amount set out in clause G2 above, in consideration of the Multichoice Service and the ADSL Service received by you, monthly in arrears by way of debit order, or such other form of payment as we may authorise, without set off or deduction, on or before the 1st day of each calendar month:

3.1 the charge for the rental of the ADSL and the Base Cap selected by you; and

3.2 the subscription fee for the Multichoice Service

(the charges and fees referred to in G.3.1 and G 3.2 are recorded in the Application Form and will herein after be referred to as the "Service Fee").

4. Billing will commence on the date on which you are connected to and capable of accessing and making use of either the Multichoice or the ADSL Service, or both, which ever may be the earlier. For the avoidance of any doubt:

4.1 you will be billed for either service, or both, from the actual date of provisioning thereof to you; and

4.2 you will be billed on a pro rated basis for the volume of either service used, or both, should billing commence during the course, as opposed to at the beginning, of a calendar month.

5. You will be liable for payment on demand for additional charges provided for in this Agreement.

6. You will under all circumstances be liable for payment of your Telkom Line to Telkom directly.

7. You will be liable for the charges of any Telkom technician who is dispatched to your premises at your instance, save for Telkom ADSL Network related matters, which will be free of charge.

8. You must pay all other taxes, duties, levies or charges that may be levied by any government authority directly or indirectly in relation to the ADSL and the Multichoice Service in addition to the Service Fees and any other amounts due and payable in terms of the Agreement.

9. You agree that we may alter the payment instruction under which you pay the Service Fee if the amounts due and payable by you should change for any reason. We may also charge and recover from you under that same instruction any other amounts owing by you under the Agreement.

10. The Companies reserve the right to change the Service Fee upon the expiry of the Initial period.

H. ACCESS TO AND DISCLOSURE OF INFORMATION RELATING TO YOU

1. You authorise us and our agents: -

1.1 to access from credit bureaux who are members of the Credit Bureau Association and subscribe to its Code of Conduct ("credit bureaux") your personal information concerning financial risk and payment habits ("payment profile") for purposes of credit information sharing, fraud prevention and debtor tracing;

1.2 to capture, store, analyse and use for marketing purposes the viewing habits and profile of the members of your household, and to retrieve such information from your decoder;

1.3 to use data that the credit bureaux may hold in relation to you from time to time for the following purposes:

1.3.1 to share information about your payment profile (but not any personal banking details) with credit bureaux for purposes of credit information sharing, fraud prevention and debtor tracing;

1.3.2 processing your requests for access to the ADSL and the Multichoice Service;

1.3.3 informing you of any new services or related facilities available, or announcements of promotional competitions;

1.3.4 administering the Agreement;

1.3.5 informing you of changes to the Agreement including changes to the Service Fees, the terms and conditions and/or the User Manual;

1.4 to disclose your personal information -

1.4.1 to credit bureaux for purposes of credit information sharing, fraud prevention and debtor tracing;

1.4.2 to companies affiliated with Multichoice and/or MWEB for purposes of marketing the services of those affiliated companies; or

1.4.3 to any company which acquires Multichoice or MWEB's business or any part thereof.

1.5 Multichoice, MWEB and their respective agents will also disclose your personal information if and to the extent required to do so to comply with applicable law including the requirements of statutory authorities.

I. MULTICHOICE and MWEB'S OBLIGATIONS

1. We will provide you with the Services and Hardware referred to in A 1 above within a reasonable period of the Commencement Date.

2. MWEB or its agent will attend to the delivery of the PVR and Hardware to you at the delivery address recorded by you in the Application Form. The PVR and the Hardware will not be delivered simultaneously.

3. Subject to compliance by you with the terms and conditions of the Agreement, we will provide you with access to the Multichoice and the ADSL Services, provided that we shall have no obligation:

3.1 to ensure that the Equipment, the Hardware or the ADSL is installed correctly;

3.2 subject to the terms of the manufacturer's warranty:

3.2.1 to ensure that the Equipment is and remains functional and enables you to receive the Multichoice Service; and

3.2.2 to maintain any component of the Equipment.

J. SUBSCRIBER'S OBLIGATIONS

1. Subject to these terms and conditions, and in addition to any other obligations imposed on you under the Agreement, you must -

1.1 inform us in writing within 7 (seven) days of any change to any of the information provided by you in relation to the Application Form and the Agreement;

1.2 inform us immediately if you become aware of –

1.2.1 any act or attempt by any party in relation to the Equipment, Hardware or the ADSL and Multichoice Service which, if committed by you, would constitute a breach of the Agreement; and

1.2.2 any damage to, or loss, theft or unauthorised use of the Equipment or Hardware.

K. BREACH OF THE AGREEMENT AND TERMINATION

1. Should you be in breach of any provision of this Agreement, then we shall be entitled, without prejudice to any other rights that we may have and without notice to you, to forthwith:

1.1. claim immediate payment of all outstanding amounts payable in terms of this Agreement;

1.2. suspend your access to the ADSL Service, or the Multichoice Service, or both, and continue to deduct the Service Fee from your bank account until such time as you have remedied the breach as provided for in K. 2 below; or

1.3. terminate this Agreement, retain all amounts already paid by you, recover all costs incurred by us, including (without being limited to) legal costs on an attorney and own client basis, and claim damages of any nature suffered by us arising from your breach.

2. If you remedy your breach of the Agreement, comply with all the terms and conditions of the Agreement and pay all outstanding amounts due to us under the Agreement, as well as the applicable reconnection fee(s), we may re-connect you to the Multichoice Service, or the ADSL Service, or both.

3. We reserve the right to:

3.1 suspend the provisioning of the ADSL Service to you in the event of non-payment by you to Telkom of your Telkom Line. You will under these circumstances be able to remedy your breach as provided for in K. 2; and

3.2 terminate the provisioning of the ADSL Service to you in the event of non-payment by you to Telkom of your Telkom Line, or the termination by you of your Telkom Line.

4 We will always use reasonable endeavours to notify you of the suspension and/or termination of the ADSL and/or the Multichoice Service.

5 You indemnify us against any damage, loss, cost or claim which we may suffer or incur arising from the suspension or termination of the ADSL and/or the Multichoice Service as contemplated in this clause K.

L. ELECTRONIC COMMUNICATIONS

1. We may communicate with you by phone, email, or by way of text messages to your cellular phone or to your PVR for display on your television screen.

2. The nature of such messages will vary, and may be used, amongst other things -

2.1 to market or promote our services and products and/or those of clients, third party and channel suppliers;

2.2 to advise you of the status of your account and any amounts owing by you; and

2.3 to inform you about our operational systems, and changes to them.

3 3. We are not liable to you, any member of your household or any third party as a result of or in connection with emails or text messaging sent or received whether by us, by you, or by a third party, using the ADSL Service or the Multichoice Service, or both, and you indemnify and hold us harmless against any loss or harm that you, any member of your household or a third party may incur as a result of any such communications.

M. INTELLECTUAL PROPERTY

1. You acknowledge that –

1.1 all materials, including the content, constituting the Multichoice Service is protected by copyright and intellectual property rights which are either owned by or licensed to Multichoice ("content rights"); and

1.2 the copyright in the software and all intellectual property rights incorporated in the Smartcard, the PVR, Equipment and Hardware owned by or licensed to Multichoice or MWEB ("the system rights"); and

1.3 you acquire no right or interest in the content rights or the system rights and you shall use your best endeavours to maintain and protect our interest and that of our suppliers and licensors in the content rights and the system rights.

N. NO WARRANTIES, LIMITATION OF LIABILITY AND INDEMNITIES

1. We make no warranty or representation in respect of the ADSL Service and/or the Multichoice Service:–

1.1 in respect of the PVR, Hardware, Equipment or any component thereof, nor that you will be able to access the ADSL Service and/or the Multichoice Service using the PVR, Hardware or Equipment, nor that such access will be continuous and uninterrupted; and

1.2 as to the quality of reception by you of the ADSL Service and/or the Multichoice Service which may suffer from degradation or interruption because of a range of uncontrollable events.

2. We make no warranty or representation as to the quality, reliability, truthfulness or accuracy of the content of the Multichoice Service or the use of materials constituting the Multichoice Service. You acknowledge that the Multichoice Service may contain images and/or content that may be regarded as unsuitable or offensive by some viewers.

3. We will always try to provide the ADSL Service to the best of our ability. However, we:

3.1 provide the ADSL Service "as is" and "as available"; and

3.2 do not warrant or guarantee that the Service:-

3.2.1 is free of errors or interruptions;

3.2.2 is always available;

3.2.3 is fit for any purpose;

3.2.4 does not infringe any third party rights;

3.2.5 is secure and reliable; or

3.2.6 will conform to your timeline requirements.

4. We also do not warrant that we will always be in a position to obtain an ADSL for you from Telkom, or that Telkom will continue to make the ADSL used by you available to us for the purposes of this Agreement.

5. We are not liable to you or any third party for, and you hold us harmless and indemnify us against, any damages suffered by you or a third party howsoever arising from your subscription to or use of the ADSL Service and/or the Multichoice Service, including (without limitation) any damages suffered by you due to:-

5.1 any interruption of or error in the ADSL Service and/or the Multichoice Service ; or

5.2 our failure to fulfil our obligations as a result of uncontrollable events, including without limitation Telkom's neglect, failure or refusal to make, or to continue to make, the ADSL or the ADSL Service available to us.

5.3 In this clause N:

5.3.1 "damages" means all damages of whatever nature and includes (without limitation) all damages, loss, claims or costs, including (without limitation) loss of data, profits or custom, or business foregone whether:-

5.3.1.1 in contract, delict or otherwise;

5.3.1.2 direct, indirect, special or consequential;

5.3.1.3 foreseeable or not; and

5.3.1.4 we were advised of the damages in advance or not; and

5.3.2 "uncontrollable events" means any circumstances beyond our reasonable control, including (without limitation) an act of God, of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, blockade, embargo, sanctions, epidemics, act of any government or other authority, compliance with government orders, demands or regulations, or any act or omission on the part of a third party (including (without limitation) Telkom).

6. If an interruption, delay, defect or failure in the Multichoice Service is due to gross negligence or wilful misconduct by Multichoice, you shall be entitled, as your sole and exclusive remedy, to a credit against future payments of your Multichoice subscription fee equal to the pro rata portion of the subscription fee representing the period of the interruption, delay, defect or failure to the extent caused by the gross negligence or wilful misconduct of Multichoice.

7. Although we strongly recommend the use of Multichoice accredited installers for the installation of the Equipment, each installer acts as an independent contractor and is not our employee, subcontractor or agent of either we are not liable for any loss or damage of any nature whatsoever caused by the conduct of the installer, including but not limited to -

7.1 any direct, indirect, special or consequential damages of any nature which you may suffer as a result of any breach by the installer of any of its obligations to you;

7.2 any loss or damage to any property of yours or of any third party as a result of an act or omission on the part of the installer.

8. You indemnify us, our affiliated companies, directors, employees and agents harmless against all damages, loss or costs suffered by us or claims instituted against us, howsoever arising, including without limitation by any third party, : -

8.1 your subscription to or use of the ADSL Service and/or the Multichoice Service; or

8.2 your breach of any of these Terms and Conditions.

O. GENERAL

1. Subject to O.5 below, the Agreement constitutes the sole and complete record of the agreement between you and us in regard to its subject matter,
and supersedes any previous agreement between us, in terms of which you were authorised to have access to the ADSL or Multichoice Service.

2. Neither you nor we are bound by any express or implied representation, warranty, undertaking, promise or the like not recorded in the Agreement.

3. Any relaxation or indulgence which we may show you at any time in regard to the Agreement is without prejudice to, and does not constitute a waiver of, any rights we may have, either in terms of the Agreement or any law.

4. If any provision of the Agreement is found to be wholly or partly invalid, unenforceable or unlawful, then the Agreement will be severable in respect of the provision in question to the extent of its invalidity, unenforceability or unlawfulness, and the remaining provisions of the Agreement will remain in full force and effect.

5. We are entitled to amend or vary the Agreement, including the provisions of the User Manual from time to time on notice to you ("general amendment").
You agree to be bound by such general amendment from the date specified in our notice, which will not be earlier than the date of receipt of such notice.
No amendment requested by you shall be valid or effective unless either captured in a general amendment or recorded in writing and signed by you and by us.

6. We may cede any of our rights and/or assign any of our obligations under the Agreement to any of our affiliated companies on written notification to you. You may not cede any of your rights and/or assign any of your obligations under the Agreement.

7. This agreement is subject to, and will be interpreted in accordance with the laws of the Republic of South Africa.

8. You consent to the jurisdiction of the Magistrates Court in respect of all proceedings arising out of or pursuant to the Agreement. We shall be entitled in our discretion to institute any proceedings in relation to the Agreement in any Division of the High Court of South Africa having jurisdiction.

9. The parties choose the following addresses, which may be amended on 7 (seven) days prior written notice to the other, for the service of all notices and processes arising out of the Agreement

9.1 Multichoice: 251 Oak Avenue, Randburg 2125, Gauteng, South Africa, or as may be amended by us from time to time.

9.2 MWEB: MWEB House, 100 Fairway Close, Parow. 7500;

9.3 You: The physical address recorded in your Application Form,

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EFFECTIVE AS OF 20 FEBRUARY 2008